IN THE HIGH COURT OF BOMBAY AT GOA
****

CRIMINAL APPEAL NO. 46 OF 2001

Employees State Insurance
Corporation Ltd., through
its Regional Director,
Panaji, Goa. .... Appellant.

Versus

1. M/s. Lusaka Engineering
Works, D3/10, Sancoale
Industrial Estate,
Zuarinagar, Goa,

2. Mr. K. K. Raikar,
Partner, 266,
United Nations Marg,
Baina, Vasco da Gama,
Goa, and

3. Mr. F. L. Coutinho,
r/o Vaddem, Vasco Da
Gama, Goa. .... Respondents.

Smt. A. A. Agni, advocate for the appellant.

Shri Sudin Usgaokar, advocate for the respondent nos. 1 and 2.

CORAM : N. A. BRITTO, J.

DATE : 19th April, 2004.

ORAL JUDGMENT

Heard learned advocate Smt. Agni on behalf of the appellant/complainant and learned advocate Shri Sudin M. Usgaokar, on behalf of the respondent no.2/accused.

2. The respondent no.2/accused, Shri K. K. Raikar, was prosecuted as a principal employer and occupier of M/s. Lusaka Engineering Works by the Manager, Employees State Insurance Corporation, having their office at Margao, under Section 85 (a) of the Employees' State Insurance Act, 1948.

The said accused has been acquitted by Judgment and Order dated 3rd March, 2001, of the learned J.M.F.C., Margao.

3. The establishment of the said accused was covered under the Employees' State Insurance Act, 1948, and was allotted code no.32-331-67 in the year 1981 and since then the said establishment was paying the contribution payable under the said Act and the Regulations framed thereunder. The said accused failed to pay the said contributions for the period from July 1993 to September, 1995. There is no dispute that the said contributions have subsequently been paid by the said accused. In acquitting the accused, the learned J.M.F.C. lost sight of the provisions of Sub-Section (6) of Section 1 of the said Act which provides that:-

> "6(1) a factory or establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power."

The learned J.M.F.C. appears to have misread the Judgment of the Hon'ble Supreme Court in the case of **Employees' State Insurance Corporation vs. M/s. F. Fibre Bangalore Pvt. Ltd.** (reported in AIR 1997 SC 2441), where the principles of the said sub-section were reiterated. On behalf of the respondent no. 2/accused it has been conceded that the provisions of Sub-section (6) of Section 1 of the Act are applicable to the case at hand. In view of the above, the

acquittal of the accused under Section 85(a) of the Act is liable to be set aside. Consequently, the accused/respondent no.2 is hereby convicted under Section 85(a)(i)(b) of the Employees' State Insurance Act, 1948.

4. Learned advocate Smt. Agni, on behalf of the complainant, and learned advocate Shri Usgaokar on behalf of the accused, have brought to my notice two decisions of the Division Bench of this Court (R. K. Batta & R.M.S.Khandeparkar, JJ.), dated 4th March, 1999 in Criminal Appeal No. 33 of 1998 (Employees State Insurance Corporation vs. M/s. Sunprint Ink Industries & Ors.) including the decision in Criminal Appeal No.14 of 1998 dated 8th December, 1998 (Employees State Insurance Corporation vs. M/s Hotel Gopika International & Anr.), in which a sentence of fine of Rs.5,000/- was considered as sufficient sentence to have been imposed on the accused. The accused, who is present in court, has been heard on the point of sentence through learned advocate Shri Sudin M. Usgaokar, who has submitted that following the ratio of the said two judgments of the Division Bench of this Court, the ends of justice would be met in this case by imposing a fine only in lieu of imprisonment.

5. Apparently, the contributions have been paid by the accused subsequently. Apparently also, the accused appears to have not paid the said contributions under a bona fide belief that the provisions of the Act would not apply to

his establishment because the strength of his employees had gone down. The said payment and the said belief on the part of the accused, could certainly be considered as adequate and special reasons not to impose the minimum punishment provided by Clause (b) of Section 85 (a)(i) of the said Act.

6. In the above view of the matter, the accused is hereby sentenced under Section 85 (a)(i)(b) of the Employees' State Insurance Act, 1948, to pay a fine of Rs.5,000/- and, in default, to undergo S.I. for three months. The fine to be deposited in the trial court within a period of three weeks from today.

N. A. BRITTO, J.

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